

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4325 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

V.D.UPADHYAYA

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner

MR HL JANI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/03/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, Malaria Surveillance Inspector (Worker), working in District Panchayat Office at Palanpur, filed this Special Civil Application before this Court and prayed for directions to the respondents to give him deemed date of promotion on the post of Malaria Surveillance Inspector. He claimed deemed date

of promotion on the aforesaid post with effect from 1.5.67.

3. The learned counsel for the petitioner admitted that the seniority of Malaria Surveillance Worker was maintained at the State level and the promotions are to be made accordingly. What the learned counsel for the petitioner contended that till 30th June 1969, the seniority of Malaria Surveillance Worker was taken unit wise and promotions to the next higher post of Malaria Surveillance Inspector were made as per unit's seniority. However, only those Malaria Surveillance Workers who had passed S.S.C. were considered to be eligible for promotion. In between 1967-69, three persons, S/Shri V.P.Bhavsar, M.D. Shastri, & V.T.Valand were brought to the Palanpur unit of Mehsana, on promotion as Malaria Surveillance Inspectors though at that time, the petitioner was eligible for promotion and was sufficiently senior in the unit's seniority. The petitioner has further contended that in the Bhuj unit, the Malaria Surveillance Workers were given promotion later in point of time, but on the basis of their unit's seniority, they have been given deemed date of promotion from the year 1965, 1967 and 1969. Reference in this respect has been made to the order of Director of Health Services, Ahmedabad, dated 30th January 1975, annexure 'A'. Further reference has been made by the petitioners to the promotion of three employees, i.e. Malaria Surveillance Workers, namely S/Shri Y.A. Memon, K.S. Gore, & A.R. Solanki in District Bhuj. They have been given promotions in November 1976, March 1980 and July 1977, but on the basis of unit's seniority, they have been given deemed date of promotion from the month of May 1969. The petitioner contended that he should have been given similar treatment. The petitioner challenged the order dated 11th July 1984 under which the Malaria Surveillance Workers were given promotion to the post of Malaria Surveillance Inspector, by filing an appeal before the Gujarat Civil Services Tribunal at Ahmedabad. All these persons who have been promoted under the said order were admittedly senior to the petitioner. This appeal came to be dismissed by the Tribunal under the order annexure 'E' dated 26th November 1984. The Tribunal has dismissed the appeal on the ground that none of the persons who have been promoted under the order dated 11.7.84 are junior to the petitioner. The other grounds given by the Tribunal that reference to the case of Kutch unit employees is hardly of any assistance to the petitioner as he belongs to Palanpur unit. The petitioner being dissatisfied with the order of the Tribunal, filed review application, but that too has been

dismissed.

4. I do not find any substance in the claim of the petitioner for deemed date of promotion. Three persons were brought in Palanpur unit on promotion as per the petitioner's own case, between 1967-69. The petitioner has not challenged their promotions at any point of time earlier to filing of this Special Civil Application, which has been filed before this Court only on 14th August 1985. If we go by the years, as given by the petitioner for promotion of those three persons, then this writ petition is filed by the petitioner, against the first promotee after more than 18 years, second promotee after 17 years and against third promotee, after 16 years. Otherwise also, it is not the case of the petitioner in the Special Civil Application that those three persons, private-respondents herein, were junior to the petitioner in the category of Malaria Surveillance Inspector. Whatever illegality or irregularity was committed by the Department in making promotions on the post of Malaria Surveillance Inspector, has been done 18, 17 and 16 years earlier before filing of this Special Civil Application and as such, the claim of the petitioner of deemed date of promotion from May 1967 on the basis of promotion of three persons aforesaid is grossly delayed. In case the petitioner would have been really aggrieved of denial of promotion, he would have approached this Court within a reasonable time but after 16 to 18 years, the petitioner has approached this Court, and therefore this claim of the petitioner deserves to be dismissed only on the ground of delay and laches. Otherwise also, when this promotion on the basis of unit's seniority has been discontinued as per petitioner's own case in the year 1969, then all the promotions made have to be corrected with reference to the State seniority and when the petitioner has not come up with the case that respondents No.4, 5 and 6 were junior to him in the State seniority also, the petitioner's promotion even in case it would have been given to him has to be rectified. So far as the other grievance of the petitioner regarding giving him benefits as being given to the employees who are working in the Kutch unit is concerned, it is rightly held by the Tribunal that the petitioner has no concern with those promotions. The promotions made under the order dated 11th July 1984 to the post of Malaria Surveillance Inspector were made on the basis of State seniority and they were admittedly senior to the petitioner. The petitioner has only started to assert his claim for deemed promotion, from the year 1984 and that claim was also only against the persons who were admittedly senior

to him.

5. Taking into consideration the totality of the facts of the case, this writ petition is wholly misconceived and the same is therefore dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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(sunil)